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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

BYUNG H. KWON, Plaintiff and Appellant, v. GEICO GENERAL INSURANCE COMPANY, Defendant and Respondent.	E068613 (Super.Ct.No. RIC1608182) OPINION

APPEAL from the Superior Court of Riverside County. Irma Poole Asberry, Judge. Affirmed.

Byung H. Kwon, in pro. per., for Plaintiff and Appellant.

Freeman Mathis & Gary, John J. Moura, Daniel C. Walsh and Zachariah E. Moura for Defendant and Respondent.

In a first amended complaint (FAC), plaintiff and appellant Byung H. Kwon (Kwon) brought 14 causes of action against defendant and respondent Geico General Insurance Company (Geico). The trial court sustained Geico's demurrer to the FAC,

and, in part, denied leave to amend. In a second amended complaint (SAC), Kwon brought eight causes of action against Geico. The trial court sustained Geico's demurrer to the SAC without leave to amend. Kwon contends the trial court erred by sustaining the demurrers and by denying him leave to amend. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

A. FAC

The facts in this subsection are taken from Kwon's FAC. Kwon had a car insurance policy with Geico. Kwon's insurance policy included provisions for: (1) $25,000 for medical payments, (2) $500,000 for underinsured motorists; and (3) $500,000 for bodily injury.

On July 1, 2014, Kwon was involved in an automobile collision with another driver (Driver), who was insured by Infinity Insurance (Infinity). Driver caused the accident by failing to stop at a red light. Due to the collision, Kwon (1) incurred a hospital bill of $96,574; (2) incurred a dental bill; (3) was unable to provide care for his paraplegic wife; and (4) was unable to assist in an arbitration involving his company. Geico paid medical bills for Kwon.

Kwon alleged that Geico and Infinity "colluded" so as to "defraud [Kwon's] claim rights on [his] under-insured motorist Insurance Provision." Kwon was unable to gain access to information about Driver's insurance policy limits because Infinity asserted Driver was not liable for the accident. Kwon also alleged that Geico failed to pay his hospital bill, "which is covered by [Kwon's] Insurance Policy under [the] Medical Payments Provision." Further, Kwon alleged that Geico wrongfully charged

him for another six months of insurance on his vehicle, which was totaled as a result of the collision.

Kwon brought causes of action for (1) fraud; (2) breach of insurance contract; (3) bad faith; (4) punitive damages; (5) violation of insurance statutes; (6) failure to provide timely notice; (7) failure or delay in payment; (8) breach of the duty to inform an insured of his rights; (9) unfair business practices (Bus. & Prof. Code, § 17200); (10) gross negligence; (11) elder abuse; (12) emotional distress; (13) conspiracy; and (14) declaratory relief. In the prayer, Kwon sought compensatory and punitive damages.

Kwon attached a variety of documents to his FAC, including a report about the accident by the California Highway Patrol. Driver reported to a California Highway Patrol Officer (the Officer) that she was exiting eastbound Route 91 onto Tyler Street, and making a left turn on a green light when Kwon failed to stop at a red light. Driver was unable to stop in time and struck Kwon's vehicle.

Kwon reported to the Officer that Kwon was stopped at a red light on Tyler Street. When the traffic light turned green, Kwon entered the intersection to make a left turn and his vehicle was struck by Driver, who failed to stop at a red light. The Officer explained that, based upon Kwon's and Driver's statements, the Officer "was unable to determine who caused this traffic collision." The report was dated July 1, 2014. On July 9, 2014, the Officer wrote a supplemental report. The officer explained that s/he spoke with a person who witnessed the traffic collision (Witness). Witness told the Officer that Kwon entered the intersection on a green light.

B. DEMURRER TO THE FAC

Geico demurred to the FAC. Geico explained that the FAC was difficult to understand, but that it appeared Kwon's primary complaint concerned the lack of payment pursuant to the underinsured motorist provision in his Geico policy. Geico explained that Kwon's claim for payment pursuant to the underinsured motorist provision failed because, in order for such a payment to be made, Kwon first had to establish (1) Driver was liable for the accident; (2) Driver's policy limits were exhausted; and (3) Kwon received payment from Infinity. Geico alleged, "[Kwon] fails to plead that he has been paid the policy limits on his claim against the adverse at-fault driver, and therefore any claim for UIM benefits is premature." Geico argued that all of the causes of action in the FAC were uncertain and failed to state a claim.

C. OPPOSITION TO THE DEMURRER TO THE FAC

Kwon opposed Geico's demurrer. Kwon asserted he sufficiently pled his causes of action. In regard to the allegedly premature underinsured motorist claim, Kwon wrote, "Geico Counsels set and interpolate their own needs on Propositions and Terms under logics of composition in fallacies as such 'under-insured motorist provision-terms and conditions were not met yet, which should be to satisfy and necessitate the Propositions and/or Terms of What laws are enacted for, first to be standing by rule of law or before calling on Defendant/Geico's under-insured motorist provision as defense."

D. RULING

The trial court issued a tentative ruling. Oral argument was not requested. The trial court made its tentative ruling the ruling of the court. The trial court sustained the demurrer. The trial court denied leave to amend on the fourth, sixth, seventh, eighth, tenth, and eleventh causes of action. The trial court granted 30 days leave to amend the remaining causes of action. The trial court's analysis of the demurrer is not reflected in its ruling.

E. SAC

Kwon filed a SAC. Kwon again described the traffic accident and hospital bill. Kwon alleged that he continued to suffer memory lapses, difficulty concentrating, vision issues, and language problems due to the accident. Kwon alleged that, in October 2014, Geico renewed his insurance policy for the vehicle that was totaled in the July 1 collision. Further, Kwon alleged Geico colluded with Infinity to prevent Kwon from receiving a payment pursuant to the underinsured motorist provision of his Geico policy. Kwon alleged, "Geico claimed against [Kwon] $18,817 and Infinity Auto who declared no liability, thus [Kwon] cannot trigger underinsured Provision." Kwon also alleged that Geico failed "to pay up [to the] policy limits of [the] Med[ical] Payments Provision."

The SAC included causes of action for (1) fraud; (2) breach of contract; (3) bad faith; (4) violation of insurance statutes; (5) unfair business practices (Bus. & Prof. Code, § 17200); (6) emotional distress; (7) conspiracy; and (8) declaratory relief. In the prayer, Kwon requested (A) damages, and (B) an order declaring "the terms and

conditions [of the] under-insured motorist provision [to be] excused or accommodated to [Kwon's] needs."

F. DEMURRER TO THE SAC

Geico demurred to the SAC. Geico asserted the SAC was difficult to understand but that it believed Kwon's primary contention concerned Geico's alleged failure to issue a payment to Kwon pursuant to the underinsured motorist provision in his Geico insurance policy. Geico contended Kwon's SAC failed because it was uncertain and failed to state a cause of action. Further, Geico asserted Kwon's allegations concerning a payment pursuant to the underinsured motorist clause of his policy was premature because Kwon "fail[ed] to plead that he has been paid the policy limits on his claim against the adverse at-fault driver." Geico asserted Kwon filed a personal injury lawsuit against Driver, which was pending in the trial court. (*Kwon v. Zaia* (Riverside County Super. Ct., case No. RIC1606766).)

G. OPPOSITION TO THE DEMURRER TO THE SAC

Kwon opposed Geico's demurrer. Kwon wrote, "[Geico] had known, knew, or should have known the egregious disregard for the aged, injured, or needed at will, malice, oppression, or fraud and deceit implied or actually performed that would be fatal causes or being irreparable ones of total failure in business, life, or well-being as whole for [Kwon], who has under-insured motorist claim rights to trigger on terms and conditions subject to under-insured motorist Provision at Insurer/Geico, [Geico] who knows how to make Plaintiff Kwon be unable to procure or trigger conditions precedent for claiming underinsured motorist Provision in Insurance Policy."

H. RULING

The trial court held a hearing on the demurrer. Kwon requested leave to amend so that he could have another opportunity to concentrate and follow the Code of Civil Procedure. Kwon explained that, in his personal injury case against Driver, the opposing counsel did not oppose Kwon's request to file a third amended complaint.

The trial court explained that when it sustained the demurrer to the FAC, it explained point by point the problems in the FAC, but, when drafting the SAC, Kwon failed to fix the errors highlighted by the trial court.[1] The trial court sustained the demurrer without leave to amend.

DISCUSSION

A. SUSTAINING THE DEMURRER

1. *STANDARD OF REVIEW*

"In reviewing an order sustaining a demurrer, we examine the operative complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory." (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 162.)

2. *FORFEITURE*

Geico asserts Kwon has forfeited his argument on appeal due to failing to (1) provide proper point headings, (2) raise coherent arguments, (3) apply the correct standard of review, and (4) provide sufficient citations to the law. (See *Central Valley*

[1] We presume the "point by point" explanation was in the trial court's tentative ruling, which does not appear to be included in the record on appeal.

Gas Storage, LLC v. Southam (2017) 11 Cal.App.5th 686, 694-695 [failure to provide meaningful legal analysis forfeits the issue].) Rather than delve into whether Kwon forfeited his claims, we choose to address the merits of Kwon's contentions for the purpose of, hopefully, providing some resolution to his concerns. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 887, fn. 7 [appellate court has discretion to address a forfeited claim]; see also *People v. Williams* (1998) 17 Cal.4th 148, 161, fn. 6 [same].)

3. *UNDERINSURED MOTORIST PROVISION*

In his SAC, Kwon alleged Geico prevented him from collecting money pursuant to the underinsured motorist provision of his policy.

Payment for an injury caused by an underinsured motor vehicle cannot be made "until the limits of bodily injury liability policies applicable to all insured motor vehicles causing the injury have been exhausted by payment of judgments or settlements, and proof of the payment is submitted to the insurer providing the underinsured motorist coverage." (Ins. Code, § 11580.2, subd. (p)(3); *Wedemeyer v. Safeco Ins. Co. of America* (2008) 160 Cal.App.4th 1297, 1303 (*Wedemeyer*).)

In other words, in order to sufficiently state a cause of action against Geico for failing to make an underinsured motorist payment, Kwon needed to allege that Kwon received a payment from Infinity, Kwon received the limit of the payment from Infinity, the money received was deficient, and that Kwon submitted an underinsured motorist claim to Geico, which Geico wrongfully denied. (Ins. Code, § 11580.2, subd. (p)(3); *Wedemeyer, supra,* 160 Cal.App.4th at p. 1303.) Kwon failed to allege that he received a payment from Infinity. Kwon also failed to allege that Driver's policy limits have

been exhausted. (Ins. Code, § 11580.2, subd. (p)(3).) Because Kwon did not make the necessary allegations, the trial court did not err by sustaining the demurrer.

Further, an underinsured motorist cause of action requires " ' "the insured to prosecute actions against the underinsured, to obtain a settlement and/or judgment and to submit proof of payment to the insurer." ' [Citation.] While this may impose a burden on the insured, it is what the statute requires. [Citation.] Once the insured has complied with the statute, the insurer is liable for underinsured motorist coverage only to the extent the insured's coverage exceeds the amount paid to the insured by or on behalf of the underinsured motorist." (*Wedemeyer v. Safeco Ins. Co. of America* (2008) 160 Cal.App.4th 1297, 1303.)

Kwon does not allege that Driver's liability has been established via a settlement or judgment. The record reflects Kwon's lawsuit against Driver is pending, and that Kwon was in the process of filing a third amended complaint following Driver's demurrer to Kwon's second amended complaint. Thus, it appears that Kwon has not yet established Driver's liability. As a result, it can reasonably be inferred that Kwon has not received money from Infinity. If Kwon has not yet received money from Infinity, then he could not have presented Geico with a sufficient underinsured motorist claim. If Kwon has not yet presented Geico with a sufficient underinsured motorist claim, then Geico could not yet have wrongfully denied such a claim. In sum, it appears Kwon has not yet established the first step, i.e., Driver's liability, of the multi-step procedure for bringing an underinsured motorist cause of action. Because Driver's liability was still being established via Kwon's personal injury lawsuit, Kwon's lawsuit against Geico, for

failing to pay Kwon pursuant to the underinsured motorist provision of his policy, is premature. The trial court did not err by sustaining the demurrer.

4. *MEDICAL PAYMENTS*

In his SAC, Kwon alleged Geico failed to pay the policy limits of the medical payments portion of his policy. Kwon alleged his Geico policy included a provision for $25,000 for medical payments. Kwon asserted he had a hospital bill of $96,547. Kwon alleged Geico paid $18,817 in medical bills. On May 9, 2016, Geico sent Kwon a letter reflecting he had $25,000 in medical coverage, with $6,182.13 that could still be used on the claim. Geico requested an itemized hospital bill with chart notes so it could further process Kwon's claim. Kwon alleged that sometime between May 15 and 18, he ordered an itemized hospital bill with chart notes. Kwon alleged that, in June 2016, Geico sent him a letter reflecting his medical coverage "on the claim has been exhausted."

Kwon failed to allege what occurred regarding the medical payments being exhausted. Kwon does not explain (1) if Geico refused to pay more than $18,817, leaving an unused balance of $6,182.13; (2) if Geico ultimately paid $25,000 in medical bills; or (3) if Geico paid more than $18,817, but less than $25,000. The manner in which Kwon has pleaded the issue leaves the reader in doubt as to whether Geico did or did not pay $25,000 in medical bills. (Code Civ. Proc., § 430.10, subd. (f) [demurrer for

uncertainty].)[2] Due to Kwon's failure to explicitly allege that Geico had not, in June 2016, paid $25,000 in medical bills, we conclude the trial court did not err by sustaining the demurrer.

5. *INSURANCE PREMIUM*

Kwon alleged Geico, in October 2014, wrongly charged him for an insurance premium for the car involved in the crash, which had been totaled in July 2014. Kwon alleged Geico wrongly renewed the policy for October 2014 to April 2015. The police report reflects that Kwon was driving a 1999 Nissan Altima at the time of the crash. Kwon's Geico insurance policy at the time of the crash reflects it covered a 1999 Nissan Altima with a vehicle identification number ending in 6528. Kwon submitted a response-opposition to Geico's reply in support of the demurrer to the SAC. Kwon attached documents to the response, including a declaration of coverage from Geico reflecting Kwon had an insurance policy for a 1999 Nissan Altima with a vehicle identification number ending in 6528 for April 2015 through October 2015.

Given that, in 2015, Geico again renewed Kwon's insurance policy for a 1999 Nissan Altima that had the same vehicle identification number as the car involved in the crash, Kwon's allegation that he was wrongly charged an insurance premium in October 2014 for a totaled car is uncertain. The allegation is uncertain because it appears that Kwon was still using the car. For example, Kwon does not allege that he had the Nissan

[2] All subsequent statutory references will be to the Code of Civil Procedure unless otherwise indicated.

Altima salvaged, such that one could understand his allegations and documents as reflecting the car was totaled in October 2014 but then salvaged in 2015.

Further, Kwon fails to allege if he brought the wrongful charge to Geico's attention, and what, if anything, occurred if he did. In other words, Kwon asserts he was wrongfully charged for a premium, but fails to provide more information. For example, Kwon does not allege if Geico refused to refund the allegedly wrongful charge. As another example, Kwon alleges Geico sent a check for $118, but he does not explain the purpose for that check, i.e., if it was a refund of his premium.

In sum, Kwon alleges Geico wrongfully charged him for an insurance premium for a totaled car; however, Kwon fails to (1) allege that Geico refused to refund the premium, (2) explain the purpose of the $118 check that Geico sent, and (3) explain why the policy was renewed again in April 2015. Thus, the allegation concerning the wrongly charged premium is uncertain because it is unclear if the car was totaled or if Kwon received a refund. (§ 430.10, subd. (f) [demurrer for uncertainty].)

Generally, demurrers for uncertainty are disfavored because ambiguities can be clarified under modern rules of discovery. (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135.) However, demurrers for uncertainty may be granted "if the pleading is so incomprehensible that a defendant cannot reasonably respond." (*Ibid.*) Kwon's SAC is extremely difficult to understand. This court read the SAC multiple times so as decipher Kwon's allegations. In addition to the difficulty in understanding the SAC, Kwon has failed to respond to discovery requests, which has resulted in sanctions against Kwon. Given the difficulty in understanding the

SAC, combined with Kwon's failure to respond to discovery requests, the trial court did not err in sustaining the demurrer.

6. *CONCLUSION*

In sum, Kwon's complaint is difficult to understand. Kwon complains about a variety of topics, but it is unclear if the things about which he is complaining were resolved at some point, e.g., the wrongful charge of the premium, or if they are the basis for his lawsuit. Kwon's allegations reflect something went wrong, but he fails to explain what, if anything, happened after the allegedly wrongful event, e.g., a refund of the wrongly charged premium. As a result, in reading Kwon's SAC, it is difficult to understand what exactly forms the basis of his lawsuit. Due to the premature nature of the underinsured motorist issue and the uncertainty involved in the other allegations, we conclude the trial court did not err in sustaining the demurrer.

B. LEAVE TO AMEND

Kwon contends the trial court erred by denying him leave to amend.

" 'Where the complaint is defective, "[i]n the furtherance of justice great liberality should be exercised in permitting a plaintiff to amend his complaint, and it ordinarily constitutes an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable possibility that the defect can be cured by amendment." ' " (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 970-971.)

In opposing the demurrer, Kwon requested leave to amend but did not indicate in what manner he would amend the SAC. At the hearing on the demurrer, the trial court explained that, following the demurrer to the FAC, the trial court "articulate[d] point by

point" the problems in the FAC. The trial court told Kwon, "[Y]ou didn't follow the instructions that I gave the last time." In other words, Kwon did not fix the problems from the FAC when drafting the SAC, despite having detailed information from the trial court. Kwon asserted that if the trial court granted him leave to amend, then he would try to concentrate and follow the Code of Civil Procedure. Kwon did not explain what portions of the SAC he would amend or how he would amend them. The trial court said, "Mr. Kwon, I didn't hear anything from you today that articulated any information to clarify the ambiguities—the uncertainty in your last pleading. I didn't hear that. Just to ask for one more time is not sufficient under the law."

After being given "point by point" information from the trial court following the demurrer to the FAC, Kwon failed to remedy the FAC's problems when drafting the SAC. Thus, when Kwon had information from the trial court regarding what needed to be fixed, he failed to follow those instructions. In regard to amending the SAC, Kwon failed to explain what portion of the SAC he would amend and how he would amend it. Accordingly, the record reflects that (1) when Kwon was told by the trial court what needed to be fixed with the FAC, he failed to fix the problems, and (2) Kwon did not have a plan for fixing the SAC. Given that Kwon did not appropriately amend the FAC when he was given "point by point" information from the trial court, there is not a reasonable possibility that he could cure the defects in the SAC when he had no plan for fixing those errors. Accordingly, the trial court did not abuse its discretion in concluding there was not a reasonable possibility that the defects in the SAC could be cured by amendment.

Kwon contends the trial court erred by denying him leave to amend because he has a right to amend a "minimum of three or four times." Kwon cites to section 430.41 to support his assertion. That law provides, "In response to a demurrer and prior to the case being at issue, a complaint or cross-complaint shall not be amended more than three times, absent an offer to the trial court as to such additional facts to be pleaded that there is a reasonable possibility the defect can be cured to state a cause of action. The three-amendment limit shall not include an amendment made without leave of the court pursuant to Section 472, provided the amendment is made before a demurrer to the original complaint or cross-complaint is filed." (§ 430.41, subd. (e)(1).)

Section 430.41, subdivision (e), provides a limit of three amendments absent leave of court to file a fourth amendment. In other words, section 430.31, subdivision (e), creates a maximum—it does not set a minimum. Accordingly, we are not persuaded that Kwon had a right to a minimum of three amendments.

On appeal, Kwon asserts that if this court reversed the denial of leave to amend, then he "could be able to procure what simple justice requires Appellant-Kwon to do by applying to thesis, antithesis and for synthesis within its meaning of justice in pursuit." Kwon again fails to explain how he will cure the defects in the SAC. For example, Kwon does not specify what additional facts he will plea in a third amended complaint so as to clarify the uncertainties in the SAC. Therefore, the trial court did not err in concluding that the defects in the SAC could not reasonably be cured by amendment.

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

RAPHAEL
J.